

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

RICHARD BANKHEAD,)

Plaintiff,)

V.)

CASE NO. 03:07CV208-MHT

AMERICAN SUZUKI MOTOR CORP., et al.,)

Defendants.)

UNOPPOSED MOTION TO CONTINUE TRIAL SETTING
(URGENT & NECESSITOUS MATTER)

Defendant American Suzuki Motor Corporation (“ASMC” or “Defendant”) , hereby moves the Court to continue this case from its current trial setting of May 12, 2008. As grounds for this motion, Defendant would show unto the Court the following:

1. This case is set for a jury trial on the Court's May 12, 2008 trial docket. As the Court is aware, plaintiff's claims arise out of a motorcycle accident that occurred while plaintiff was riding a 2006 Suzki GSX-R750 motorcycle. Plaintiff's Complaint, which was filed on January 30, 2007, included claims made pursuant to Alabama's Extended Manufacturer's Liability Doctrine ("AEMLD"), breach of warranty, negligence, and wantonness.

2. On November 19, 2007, ASMC filed a Motion for Summary Judgment on the grounds that plaintiff failed to disclose a testifying expert witness, whose testimony is required under Alabama law as a prerequisite for this product liability action. Defect allegations for complex products such as a motorcycle's electrical system require affirmative supporting expert testimony as a matter of law; and it is Defendant's contention that plaintiff failed to produce any

such testimony. The issues raised by this Motion have been thoroughly briefed by both parties, and the Motion is currently awaiting final decision by this Court.

3. Should the Court deny Defendant's Motion for Summary Judgment, Defendant could be without necessary information needed in order to properly defend the claims against it, despite having been the party that has complied with the Court's April 4, 2007 Uniform Scheduling Order. In consideration of the quickly approaching May 12, 2008 trial date, and the fact that a denial could place ASMC in the precarious position of not having conducted adequate discovery of plaintiff's purported expert, on March 8, 2008, in a good faith effort to both protect ASMC's interests and comply with the Court's February 22, 2008 Order Setting Pretrial Hearing, counsel for ASMC contacted counsel for Plaintiff in an effort to schedule the deposition of Bryan Oschman. However, Mr. Oschman currently resides in Connecticut, and as of the filing of this motion it was unknown whether Mr. Oschman would be deposed prior to the March 24, 2008 pre-trial hearing.

4. However, should the court grant Defendant's Motion for Summary Judgment, the risk is great that the parties' resources spent preparing for and deposing the plaintiff's purported expert, performing the necessary and costly pre-trial activities, and attending the pre-trial hearing would be wasted.

5. In an effort to allow the Court additional time to review and rule on the Defendant's Motion For Summary Judgment, and to prevent a waste of both the Court's and the parties' resources, ASMC respectfully requests that the Court continue the May 12, 2008 trial setting, and reset the trial and the accompanying pre-trial deadlines to the Court's next available trial docket.

6. On March 8, 2008, plaintiff's counsel was contacted regarding Defendant's intention to file the present Motion to Continue, at which time Plaintiff's counsel stated his intention not to oppose the motion.

WHEREFORE, for the foregoing reasons, Defendant requests that the Court continue this case from the May 12, 2008, trial docket to the Court's next available trial setting.

/s/ JOHN D. MAYO

One of the Attorneys for Defendant
American Suzuki Motor Corp.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted,

/s/ JOHN D. MAYO
Of Counsel